

Office of Thrift Supervision
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POWERS OF FEDERAL SAVINGS ASSOCIATIONS

As of March 1, 2002



POWERS OF FEDERAL SAVINGS ASSOCIATIONS

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POWERS OF FEDERAL SAVINGS ASSOCIATIONS

(As of March 1, 2002)

Federal savings associations and federal savings banks (FSAs) may engage in activities that are expressly authorized by statute (the Home Owners' Loan Act (HOLA), 12 U.S.C. § 1461 et seq.) or that are incidental to expressly authorized activities. This list is intended to provide a summary overview of the basic powers of FSAs. It is not intended to be a complete inventory of permitted activities. The powers identified in this document may evolve over time. Accordingly, this list is not exclusive or exhaustive. OTS may permit FSAs to engage in additional activities in the future. This list should not be cited as precedent. FSAs should review the authorities cited here and other relevant precedent and, where appropriate, consult with their respective OTS Regional Offices, before engaging in an activity.

I. DEPOSITS AND DEPOSIT-RELATED POWERS

A. Brokered Deposits

In general, only well-capitalized FSAs and certain FSAs in conservatorship may accept brokered deposits. However, adequately capitalized institutions may accept brokered deposits if permitted by the FDIC on a case-by-case basis. 12 U.S.C. § 1831f.

B. Demand Deposits (Checking Accounts) and Negotiable Order of Withdrawal Accounts (NOW Accounts)

FSAs may offer non-interest bearing demand accounts to all customers. FSAs may also offer interest-bearing NOW accounts to individuals, non-profit organizations, and government entities. (FSAs must reserve the right to require at least 7 days notice prior to withdrawal from NOW accounts.) 12 U.S.C. § 1464(b) and 1832; 12 C.F.R. part 557; 12 C.F.R. §§ 561.16, 561.28 and 561.29.

C. Interest on Lawyer Trust Accounts ("IOLTA")

FSAs may accept IOLTA funds in NOW accounts. OTS Op. Dep. Ch. Couns., May 15, 1998 and OTS Op. Ch. Couns., Oct. 29, 1991.

D. Mutual Capital Certificates

FSAs may issue and sell mutual capital certificates directly to subscribers or through underwriters. 12 U.S.C. § 1464(b)(4).

E. Public Funds

FSAs may accept deposits of federal government funds, serve as fiscal agents of the federal government, and give security in connection with these activities. 12 U.S.C. § 1464(k); 12 C.F.R. §§ 545.16 and 545.101.

FSAs may also accept state and local government funds for deposit and give security to the extent state law requires security for such deposits. 12 C.F.R. § 545.16.

F. Special Deposits (Receipt of Money, Financial Instruments, or Other Property for Safe-Keeping Including Escrow Accounts and Safe Deposit Boxes)

FSAs may accept special deposits. 12 U.S.C. § 1464(b).

FSAs may provide escrow services in connection with real estate loans and real estate transactions. See 61 Fed. Reg. 50,951, 50,961 (Sept. 30, 1996).

FSAs may establish and maintain commercial escrow accounts on behalf of customers. OTS Op. Ch. Couns., Aug. 19, 1998.

FSA service corporations may act as escrow agents. 12 C.F.R. § 559.4(c)(7) . See also VIII.C. below, "Escrow and Surety."

G. Time Deposits (CDs, Savings Accounts, and Retirement Accounts)

FSAs may offer and pay interest on time and savings deposits without significant restriction. 12 U.S.C. § 1464(b); 12 C.F.R. §§ 557.10, 557.14, and 561.9.

FSAs may issue certificates of deposit with interest rates tied to a stock market index. FHLBB Op. Gen. Couns., Oct. 26, 1987. See also Thrift Activities Regulatory Handbook §§ 560.3 and 560.4 (Sept. 1998) (discussing risks of issuing certificates of deposit with interest rates tied to a stock market index where a deposit brokerage firm covers the risks of increasing index values).

FSAs may act as trustee for certain retirement accounts. 12 U.S.C. § 1464(l); 12 C.F.R. § 550.580.

II. LENDING

FSAs generally are subject to the same rules limiting loans to one borrower ("LTOB") as national banks. 12 U.S.C. § 1464(u); 12 C.F.R. § 560.93. Under these rules, a FSA's total outstanding loans and extensions of credit to one borrower may not exceed 15% of the FSA's capital and surplus, plus an additional 10% if the amount exceeding the 15% limit is fully secured by readily marketable collateral. See 12 U.S.C. § 84(a); 12 C.F.R. § 32.3(a). However, certain loans and extensions of credit also are subject to special lending limits. See 12 U.S.C. § 84(c); 12 C.F.R. § 32.3(b). There are also exceptions to the general LTOB limitations. If a FSA's aggregate lending limitation is less than \$500,000, it may have total LTOB not to exceed \$500,000. 12 C.F.R. § 560.93(d)(1). Under certain conditions, a FSA may make LTOB to develop domestic residential housing units, not to exceed the lesser of \$30,000,000 or 30% of the FSA's unimpaired capital and surplus. 12 C.F.R. § 560.93(d)(3). Other statutory exceptions also apply. 12 C.F.R. § 560.93(d)(2). Further, FSAs may apply to participate in a lending limits pilot program that creates new special lending limits for 1-4 family residential real estate loans and small business loans. Thrift Bulletin 79 (Oct. 25, 2001).

If a loan or other investment is authorized under more than one section of HOLA or 12 C.F.R. part 560, a FSA may designate, for HOLA investment limit purposes, under which section(s), in whole or in part, it made the loan or investment. 12 C.F.R. § 560.31. See also Thrift Bulletin 78 (Oct. 10, 2001).

All loans are subject to general safety and soundness strictures against over-concentration of investments in particular types of assets. Any other limits that apply under applicable law are noted with respect to each type of loan discussed in this section of the list.

A. Commercial Loans

1. In general (secured or unsecured)

FSAs may make commercial loans, subject to a limit of 20% of total assets, provided that amounts in excess of 10% of total assets are used only for small business loans. 12 U.S.C. § 1464(c)(2)(A); 12 C.F.R. § 560.30. Small business loans include any loan to a small business (*i.e.*, a small business concern or entity as defined by section 3(a) the Small Business Act, 15 U.S.C. 632(a), and implemented by the Small Business Administration regulations at 13 C.F.R. part 121); or a loan that does not exceed \$2 million (including a group of loans to one borrower) and is for commercial, corporate, business, or agricultural purposes. See 66 Fed. Reg. 65,822, 65,825 (Dec. 21, 2001) (amending definition of “small business loans and loans to small businesses” at 12 C.F.R. § 560.3).

2. Business development credit corporation loans

FSAs generally may lend to business development credit corporations chartered in their home state to the same extent as state-chartered savings associations in the state, subject to a limit of the lesser of .5% of total outstanding loans or \$250,000. 12 U.S.C. § 1464(c)(4)(A); 12 C.F.R. § 560.30.

3. Equity kicker loans

This activity is generally permissible for FSAs, under the general lending authorities, subject to safety and soundness considerations. See 12 U.S.C. § 1464(c); Joint Issuance on Leveraged Financing (Apr. 2001).

4. Financial institution, broker, and dealer loans

FSAs may make loans to financial institutions, brokers, and dealers, provided such loans are secured by assets in which FSAs may invest directly. 12 U.S.C. § 1464(c)(1)(L); 12 C.F.R. § 560.30.

5. Letters of credit and standby letters of credit (independent undertakings)

FSAs may issue ordinary letters of credit and standby letters of credit without investment limit, so long as a fee is charged and/or reimbursement is provided for in order to minimize a FSA’s risk exposure. 12 C.F.R. § 560.120.

6. Loan participations

FSAs may generally engage in loan participations under the general lending authorities, subject to safety and soundness considerations. See 12 U.S.C. § 1464(c); Interagency Statement on Sales of 100% Loan Participations (Apr. 10, 1997) (OTS TB 70, Apr. 30, 1997).

7. Merchants’ accounts receivable

FSAs may purchase accounts receivable at a discount from merchants with recourse (subject to the commercial lending limit). OTS Op. Ch. Couns., June 3, 1999.

8. Nonresidential real estate secured loans

FSAs may make loans secured by nonresidential real estate, subject to a limit of 400% of capital. 12 U.S.C. § 1464(c)(2)(B); 12 C.F.R. § 560.30.

9. Short-term repurchase agreements

FSAs may generally enter into short-term repurchase agreements, subject to prudent controls for the purchase and sale of the repurchase agreement, including lending limits and collateral requirements. FHLBB Op. by Smith, June 28, 1988.

B. Consumer Loans

1. Credit card loans

FSAs may make credit card loans for any purpose. 12 U.S.C. § 1464(c)(1)(T); 12 C.F.R. §§ 560.3 and 560.30.

2. Deposit account secured loans

FSAs may make loans secured by deposit accounts. 12 U.S.C. § 1464(c)(1)(A); 12 C.F.R. § 560.30.

3. Education loans

FSAs may make education loans. 12 U.S.C. § 1464(c)(1)(U); 12 C.F.R. § 560.30.

4. Native American organizations loans

FSAs may make loans to Native American organizations without regard to the limitations and restrictions of certain federal statutes. 25 U.S.C. § 1489.

5. Overdraft loans

FSAs may make overdraft loans. However, overdraft credit relating to commercial demand accounts is subject to the commercial lending limit. 12 U.S.C. § 1464(c)(1)(A); 12 C.F.R. § 560.30.

6. Personal, family, or household purpose loans

FSAs may make loans for personal, family, or household purposes, provided the aggregate amount does not exceed 35% of assets when combined with commercial paper and corporate debt securities. 12 U.S.C. § 1464(c)(2)(D); 12 C.F.R. § 560.30.

7. Stock secured loans

Loans secured by stock are subject to either the commercial or consumer lending limits, depending upon the purpose of the loan. See 12 U.S.C. § 1464(c)(2)(A) and (D).

C. Leasing

FSAs may engage in general leasing of tangible personal property, including investing in vehicles, manufactured homes, machinery, equipment or furniture for the purpose of leasing such property, subject to a limit of 10% of assets. 12 U.S.C. § 1464(c)(2)(C); 12 C.F.R. §§ 560.30 and 560.41(d).

FSAs may engage in finance leasing activities that are the “functional equivalent” of loans made under various lending authorities, including commercial, business, corporate and agricultural lending, consumer lending, and residential and nonresidential real estate lending, provided: (1) any such leases are net, full-payout leases, which requires that residual value not exceed 25%; and (2) the amount of the investment is counted toward the appropriate loan investment limit (e.g., commercial leases must fit within

commercial lending limits). 12 U.S.C. § 1464(c)(1)(B), (c)(2)(A), (c)(2)(B), and (c)(2)(D); 12 C.F.R. § 560.41(b) and (c).

FSA service corporations may acquire and lease personal property to the general public without restriction. 12 C.F.R. § 559.4(c)(2).

D. Residential Loans

1. In general - real estate secured loans

FSAs may make loans secured by residential real estate without limitations as to percentage of assets. FSAs may make, invest in, purchase, sell, participate in, or otherwise deal in loans secured by residential real estate. 12 U.S.C. § 1464(c)(1)(B), (E), and (R); 12 C.F.R. § 560.30. See 12 C.F.R. § 560.3 (definition of "real estate loan"), as amended at 66 Fed. Reg. at 65,825.

2. Financing the purchase of fee simple title from lessors

FSAs may make loans insured by HUD (under section 240 of the National Housing Act, 12 U.S.C. § 1715z-5) for the purpose of financing purchase by homeowners (lessees under long-term ground leases) of the fee simple title to property on which their homes are located. 12 U.S.C. § 1464(c)(1)(K); 12 C.F.R. § 560.30.

3. Home improvement loans (unsecured)

FSAs may make home improvement loans and loans for manufactured home financing. 12 U.S.C. § 1464(c)(1)(J); 12 C.F.R. § 560.30.

4. HUD insured or guaranteed loans or investments

FSAs may make certain HUD insured or guaranteed loans or investments, such as under 42 U.S.C. § 1440. 12 U.S.C. § 1464(c)(1)(O); 12 C.F.R. § 560.30.

5. Insured loan purchases

FSAs may purchase loans secured by liens on improved real estate that are insured or guaranteed under the National Housing Act (12 U.S.C. § 1701 et seq.), the Servicemen's Readjustment Act of 1944, or 38 U.S.C. § 3701 et seq. 12 U.S.C. § 1464(c)(1)(I); 12 C.F.R. § 560.30.

6. Mortgage loan performance guaranties

FSAs may provide performance guaranties on low down payment mortgage loans that the FSA originates or purchase and that carry private mortgage insurance from a third party, provided that it is done in a safe and sound manner and in compliance with applicable consumer protections. OTS Op. Ch. Couns., Oct. 2, 1998.

7. Nonconforming loans

FSAs may make nonconforming loans upon the security of or respecting real property or interests therein used for primarily residential or farm purposes, but not to exceed 5% of assets. 12 U.S.C. § 1464(c)(3)(B); 12 C.F.R. § 560.30.

8. Real estate construction loans (unsecured)

FSAs may make construction loans for residential real estate subject to a limit equal to the greater of 5% of assets or 100% of capital. 12 U.S.C. § 1464(c)(3)(C); 12 C.F.R. § 560.30.

9. Shared appreciation loans

FSAs may make adjustable rate reverse mortgage loans that include an equity share feature, subject to certain conditions. OTS Op. Ch. Couns., May 3, 1996.

III. INVESTMENTS

A. Bank Activity Related

1. Bankers' acceptances

FSAs may invest in bankers' acceptances issued by other nonaffiliated institutions without investment limit. 12 U.S.C. § 1464(c)(1)(M).

2. Bankers' banks

FSAs may purchase shares in bankers' banks, or their holding companies that have depository institutions or depository institution holding companies as investors, in an amount of up to 10% of the FSA's capital stock and unimpaired surplus. In addition, each FSA may not hold more than 5% of the voting securities of the bankers' bank/holding company. 12 U.S.C. § 1464(c)(4)(E).

3. Pass-through investments

FSAs may make pass-through investments in entities that engage only in activities that the FSA may conduct directly, subject to certain requirements. 12 C.F.R. § 560.32.

B. Cash, Liquid

1. Deposit accounts

FSAs may invest in the deposit accounts of any insured depository institution, without investment limit. 12 U.S.C. § 1464(c)(1)(G); 12 C.F.R. § 560.30.

2. Liquidity investments

FSAs may make investments (other than equity investments), identified by the Director, for liquidity purposes, including cash, funds on deposit at a Federal Reserve Bank or a Federal Home Loan Bank ("FHLB"), or bankers' acceptances. 12 U.S.C. § 1464(c)(1)(M); 12 C.F.R. § 560.30. OTS removed the Liquidity Rule from codification at 12 C.F.R. part 566 as unnecessary and substituted a general requirement at 12 C.F.R. § 563.161(a)(2) for each savings association and service corporation to maintain sufficient liquidity to ensure its safe and sound operation. See 66 Fed. Reg. 15,015 (Mar. 15, 2001) and 66 Fed. Reg. 37,406 (July 18, 2001). The approved liquidity investments formerly listed at 12 C.F.R. § 566.1(g) remain authorized under other authority.

C. Community Development and Charitable Investments and Activities of FSA Service Corporations (Preapproved)

FSA service corporations are preapproved to invest in: (1) tax-exempt bonds used to finance residential real property for family units; (2) tax-exempt obligations of public housing agencies used to finance housing projects with rental assistance subsidies; (3) small business investment companies and new markets venture capital companies licensed by the U.S. Small Business Administration; and (4) savings accounts of an investing thrift. 12 C.F.R. §§ 559.4(a) and 559.4(g). See 66 Fed. Reg. at 65,825 (amending 12 C.F.R. § 559.4(g)).

FSA service corporations are preapproved to perform the following community development and charitable activities: (1) investments in governmentally insured, guaranteed, subsidized or otherwise sponsored programs for housing, small farms, or businesses that are local in character; (2) investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families (such as providing housing, services, or jobs); (3) investments in low-income housing tax credits and new markets tax credit projects and entities authorized by statute (e.g., community development financial institutions) to promote community, inner city, and community development purposes; and (4) establishing a corporation that is recognized by the IRS as organized for charitable purposes under 26 U.S.C. § 501(c)(3) of the Internal Revenue Code and making a reasonable contribution to capitalize it, provided that the corporation engages exclusively in activities designed to promote the well-being of communities in which the owners of the service corporation operate. 12 C.F.R. § 559.4(h), as amended at 66 Fed. Reg. at 65,825.

D. Corporate

1. Commercial paper

FSAs may invest in, sell, or hold commercial paper subject to certain requirements and limits (i.e., ratings, lending limits, information retention, percent of asset limitations, appropriate underwriting). 12 U.S.C. § 1464(c)(2)(D); 12 C.F.R. §§ 560.30 and 560.40; 66 Fed. Reg. at 65,826 (to be codified at 12 C.F.R. § 560.40(c)).

2. Corporate debt securities

FSAs may invest in, sell, or hold corporate debt securities subject to certain requirements and limits (i.e., marketability requirements, ratings, lending limits, information retention, percent of asset limitations, appropriate underwriting). 12 U.S.C. §§ 1464(c)(2)(D) and 1831e(d); 12 C.F.R. §§ 560.30 and 560.40; 66 Fed. Reg. at 65,826 (to be codified at 12 C.F.R. § 560.40(c)).

With OTS approval, a FSA may invest in corporate debt securities of another savings association in connection with the purchase or sale of a branch office or in connection with a supervisory merger or acquisition. 12 C.F.R. § 560.40(b).

3. Mutual fund shares

FSAs may purchase for their own accounts, without investment limit, shares of any registered open-end mutual fund that invests exclusively in assets that FSAs may hold without investment limit. 12 U.S.C. § 1464(c)(1)(Q). See also 12 C.F.R. § 560.32.

E. Foreign-Related

1. Debt securities in foreign currencies

FSAs may issue debt securities and warrants to purchase debt securities denominated in foreign currencies. OTS Op. Ch. Couns., Feb. 1, 2000.

2. Foreign assistance investments

FSAs may make certain foreign assistance investments, not to exceed 1% of total assets. 12 U.S.C. § 1464(c)(4)(C); 12 C.F.R. § 560.30.

3. Foreign government securities, foreign exchange, bullion

FSAs may invest in securities of foreign governments, subject to the commercial lending limit and safety and soundness. 12 U.S.C. § 1464(c)(2)(A); OTS Op. Acting Ch. Couns., June 18, 1993.

F. Government-Related

1. State and local government securities and obligations

FSAs may invest in obligations issued by any state, territory, possession, or political subdivision thereof, subject to appropriate underwriting, as follows: (1) for general obligations, no aggregate limitation or per-issuer limitation; (2) for other obligations of a governmental entity (e.g., revenue bonds) that hold one of the four highest investment grade ratings by a nationally recognized rating agency or that are nonrated but of investment quality, no aggregate limitation but a 10% of total capital per-issuer limitation; and (3) for obligations of a governmental entity that do not otherwise qualify but are approved by the OTS Regional Director, whatever aggregate limitation the Regional Director may approve and a 10% of total capital per-issuer limitation. 12 U.S.C. § 1464(c)(1)(H); 12 C.F.R. §§ 560.30 and 560.42; 66 Fed. Reg. at 65,826-27 (amending 12 C.F.R. § 560.42).

FSAs may invest in the obligations of and make loans to State housing corporations under certain conditions. 12 U.S.C. § 1464(c)(1)(P); 12 C.F.R. § 560.30.

2. U.S., federal agencies, and U.S. government sponsored enterprises securities and obligations

FSAs may invest in securities issued or guaranteed by the U.S, without investment limit. 12 U.S.C. § 1464(c)(1)(C); 12 C.F.R. § 560.30.

FSAs may invest, without investment limit, in securities and obligations issued by, or fully guaranteed as to principal and interest by, Fannie Mae, Sallie Mae, Ginnie Mae, or any agency of the United States (e.g., TVA, Export-Import Bank, Commodity Credit Corp., and instrumentalities such as Banks for Cooperatives, Farm Credit Banks, and the Federal Financing Bank). 12 U.S.C. § 1464(c)(1)(F); 12 C.F.R. § 560.30.

FSAs may invest in the securities of the following government-sponsored corporations, without investment limit: Fannie Mae, Freddie Mac, and FHLBs. 12 U.S.C. § 1464(c)(1)(D) and (E); 12 C.F.R. § 560.30.

FSAs may purchase Farmer Mac common stock in nominal amounts necessary to enable them to sell agricultural loans to Farmer Mac and to participate in Farmer Mac's secondary market. OTS Op. Ch. Couns., Oct. 14, 1997.

G. Mortgage-Related

1. Mortgage-backed securities

FSAs may invest in, sell, or otherwise deal in certain high quality real estate mortgage-backed securities. 12 U.S.C. § 1464(c)(1)(R); 12 C.F.R. § 560.30.

2. Residential mortgage-related securities

FSAs may generally invest in mortgage-related securities that convey an interest in mortgage loans or a mortgage loan product, without investment limit. 12 U.S.C. § 1464(c)(1)(B) and OTS Op. Ch. Couns., Mar. 28, 1996.

H. Real Estate-Related

1. Real estate for FSA offices

FSAs may invest in real estate to be used for their own offices and related facilities and for reasonable future office expansion, provided such investments are made and maintained under a prudent program of property acquisition to meet present needs or reasonable future needs for office space and related facilities. The outstanding book value of all investments for office space and related facilities, when aggregated with the amount of service corporation investments in real estate maintained for offices and related facilities, may not exceed a FSA's total capital. 12 C.F.R. § 560.37.

2. Real estate (other)

FSAs may hold and convey real estate mortgaged to them or conveyed to them as security for or in satisfaction of debts previously contracted, and as purchased at sales under judgments, decrees, or mortgages held by the FSA to secure debts due to it (REO). Generally, a FSA may not hold REO for longer than 5 years, unless approved by OTS. Thrift Activities Regulatory Handbook § 251; see also 12 C.F.R. §§ 545.96 and 560.93(c).

FSA service corporations also may hold real estate for construction and development purposes. 12 C.F.R. § 560.30 and 559.4(e). See also III.C. above, "Community Development and Charitable Investments and Activities of FSA Service Corporations (Preapproved)."

I. Small Business, Community Development

1. Business development credit corporations

FSAs generally may invest in business development credit corporations chartered in their home state to the same extent as state-chartered savings associations in the state, subject to a limit of the lesser of .5% of total outstanding loans or \$250,000. 12 U.S.C. § 1464(c)(4)(A); 12 C.F.R. § 560.30.

2. Community development

FSAs may make investments in real property and obligations secured by liens on real property located within a geographic area or neighborhood receiving concentrated development assistance by a local government under title I of the Housing and Community Development Act of 1974 (42 U.S.C. § 5301 et seq.). Community development Investments and loans are limited to 5% of total assets, provided that equity investments do not exceed 2% of total assets. 12 U.S.C. § 1464(c)(3)(A); 12 C.F.R. § 560.30. See also OTS Op. Ch. Couns., Nov. 22, 1996; OTS Op. Ch. Couns., May 10, 1995.

FSAs may invest in the aggregate up to the greater of 1% of their total capital or \$250,000 in community development investments of the type permitted for national banks under 12 C.F.R. part 24; 66 Fed. Reg. at 65,826 (amending 12 C.F.R. § 560.36).

FSAs may form community partnerships with community development financial institutions. 12 U.S.C. § 4705.

FSAs may invest in the development of a commercial industrial building that OTS determines is a bona fide community development investment, provided certain conditions are met. OTS will do a case-by-case review for commercial community development investments. OTS Op. Ch. Couns., July 20, 1999. See also Community Development Investment Authority: A Guide to the Federal Laws & Regulations Governing Community Development Activities of Savings Associations, OTS, (Dec. 1998) and III.C. above, "Community Development and Charitable Investments and Activities of FSA Service Corporations (Preapproved)."

3. Low-income housing tax credit partnerships

FSAs may invest in low-income housing tax credit partnerships, under limited circumstances. OTS Op. Act. Ch. Couns., Nov. 10, 1994.

4. National Housing Partnership Corporation

FSAs may invest in shares of stock issued by a corporation authorized to be created under 42 U.S.C. § 3932 to build, rehabilitate, acquire, and finance housing and related facilities for low- and moderate-income families and individuals and in any partnership, limited partnership, or joint venture formed under 42 U.S.C. § 3937(a) or (c) for developing low- and moderate-income housing. 12 U.S.C. § 1464(c)(1)(N).

5. Neighborhood Housing Services of America (NHS) securities

FSAs may purchase securities backed by loan pools organized by Neighborhood Housing Services of America. OTS Op. Ch. Couns., Mar. 28, 1996.

6. New Markets Venture Capital Companies

FSAs may invest in stock, obligations, or other securities of any New Markets Venture Capital company (defined in 15 U.S.C. § 689), up to 5% of the FSA's capital and surplus. 12 U.S.C. § 1464(c)(4)(F).

7. Small businesses

FSAs may invest in small business-related securities, which are securities rated in 1 of the 4 highest rating categories that represent an interest in promissory notes or leases of personal property evidencing the obligations of a small business concern, without investment limit. 12 U.S.C. § 1464(c)(1)(S); 12 C.F.R. § 560.30.

FSAs may invest in small business investment companies or any entity established to invest solely in small business investment companies, up to 5% of total capital. 15 U.S.C. § 682(b); 66 Fed. Reg. at 65,825 (amending 12 C.F.R. § 560.30).

J. Trust Preferred Securities

FSAs may invest in trust preferred securities subject to certain requirements and limits. 12 C.F.R. § 560.40; TB 73a (Dec. 18, 2001).

IV. ELECTRONIC OPERATIONS

FSA may use, or participate with others to use, electronic means or facilities to perform any function, or provide any product or service, as part of an authorized activity. Electronic means or facilities include, but are not limited to, ATMs, automated loan machines ("ALMs"), personal computers, the Internet, the World Wide Web, telephones, and other similar electronic devices. 12 C.F.R. § 555.200(a). Prior to the promulgation of part 555, OTS had specific regulations governing data-processing services, remote service units, and home banking services. See 12 C.F.R. §§ 545.138, 545.141, and 545.142 (1998). The elimination of those regulations did not take away the authority of FSAs to engage in any activities described in those sections. 63 Fed. Reg. 65,673 (Nov. 30, 1998).

A. Electronic Commerce

1. Data processing; furnishing products and services by electronic means

FSAs may market and sell electronic capacities and by-products to others if acquired or developed in good faith as part of providing financial services. 12 C.F.R. § 555.200(b).

2. Hosting commercially enabled web sites

FSA service corporations may offer Internet Service Provider Services to nonfinancial customers up to 50% of capacity. OTS Op. Ch. Couns., Apr. 14, 1997. See also IV.B. below, "Electronic Operations of FSA Service Corporations (Preapproved)."

B. Electronic Operations of FSA Service Corporations (Preapproved)

FSA service corporations are preapproved to perform the following electronic operations and activities when they are limited to financial documents or financial clients or are generally finance-related: (1) data processing; (2) data storage facilities operation and related services; (3) printing and selling forms that require Magnetic Ink Character Recognition (MICR) encoding; (4) software development and systems integration; (5) remote service unit operation, leasing, ownership or establishment; and (6) stored value instrument sales. 12 C.F.R. §§ 559.4(b) and 559.4(d)(6).

C. Electronic Payments

1. Dispensing loans from ATMs

FSAs may use automated loan machines to assist in processing loan applications by issuing checks for presentment or collection. OTS Op. Ch. Couns., Sept. 19, 1997.

2. Stored-value cards

FSAs may market and sell prepaid telephone cards as an agent for a telephone company. OTS Op. Ch. Couns., Aug. 29, 1996.

FSA service corporations may engage in the business of developing and selling stored value instruments. 12 C.F.R. § 559.4(d)(6). See also IV.B. above, "Electronic Operations of FSA Service Corporations (Preapproved)."

D. Internet Banking

FSAs must file a written notice before establishing transactional web sites. A transactional web site is an Internet site that enables users to conduct financial transactions such as accessing an account, obtaining an account balance, transferring funds, processing bill payments, opening an account, applying for or obtaining a loan, or purchasing other authorized products or services. 12 C.F.R. § 555.300.

FSAs may invest in electronic funds transfer networks that permit the transfer of funds between accounts, and providing related electronic banking services through the Internet. OTS Op. Ch. Couns., May 5, 1995.

FSAs may hold limited partnership shares in an electronic funds transfer network without the network being deemed a service corporation or operating subsidiary. OTS Op. Ch. Couns., Dec. 22, 1995.

V. FIDUCIARY POWERS

A. In General

FSAs may, with OTS regulatory approval, exercise trust powers in any state that authorizes state banks and other local competitors to act as fiduciaries to the same extent as those fiduciaries are authorized to act. 12 U.S.C. § 1464(n); 12 C.F.R. part 550; OTS Ops. Ch. Couns., Mar. 28, 1996 and May 5, 1995.

B. Incidental Services

FSAs may perform incidental services pursuant to serving as testamentary trustee or holding real estate in trust without being deemed located in the state(s) where incidental services are provided. OTS Op. Ch. Couns., Aug. 8, 1996. See OTS Op. Ch. Couns., July 1, 1998 (incidental services to pre-need funeral trusts); OTS Op. Ch. Couns., Dec. 21, 1998 (FSAs may pay referral fees to third parties for referral of trust business). See also OTS Op. Ch. Couns. Oct. 17, 1995 (FSA may provide ministerial support services as agent for unaffiliated trust company); OTS Op. Ch. Couns., Nov. 22, 1995 (FSAs with trust powers, in conducting trust activities, may contract with affiliate to provide management and advisory services).

C. Interstate Marketing

FSAs may market trust services interstate without regard to state laws that prohibit foreign fiduciaries from marketing. OTS Op. Ch. Couns., June 21, 1996.

D. Through Agency Offices

FSAs, with OTS approval, may exercise trust powers through agency offices located in any state that authorizes state banks or other companies to act as fiduciaries. OTS Op. Ch. Couns., Mar. 28, 1996. Further, state laws to the contrary are preempted for FSAs. OTS Op. Ch. Couns., Jan. 3, 2001.

VI. INSURANCE AND ANNUITIES

A. In General

FSAs may sell credit-related insurance and fixed annuities on an agency basis, without geographic restriction. OTS Op. Acting Ch. Couns., Oct. 17, 1994; OTS Op. Ch. Couns., Feb. 12, 1996.

FSAAs may underwrite or reinsure credit insurance through operating subsidiaries provided such insurance is issued in connection with loans made by the FSA or the FSA's subsidiaries and, with OTS approval, may do so through service corporations. FHLBB Op. Dep. Ch. Couns., Feb. 29, 1988; FHLBB Res. No. 86-745; OTS Op. Ch. Couns., Jan. 10, 1995.

FSAAs and their operating subsidiaries may sell credit insurance that covers unemployment and single interest property insurance. OTS Op. Ch. Couns., Feb. 12, 1996.

FSA service corporations may engage in the business of viatical financing. OTS Order No. 97-49 (May 20, 1997). See also VI.B. below, "Insurance Activities of FSA Service Corporations (Preapproved)."

B. Insurance Activities of FSA Service Corporations (Preapproved)

FSA service corporations are preapproved to perform insurance brokerage or agency for liability, casualty, automobile, life, health, accident, or title insurance. 12 C.F.R. § 559.4(f)(3).

C. Mortgage Insurance and Reinsurance

FSAAs can self insure mortgage loans with an LTV between 80% and 90%. Interagency Guidelines for Real Estate Lending Policies, 12 C.F.R. § 560.101 (Appendix). See also TB 26 (April 21, 1989) (establishing criteria for FSAAs to self-insure mortgage loans that were insured by a defunct mortgage insurer).

FSAAs may participate in a reciprocal mortgage guaranty reinsurance program. OTS Op. Ch. Couns., Mar. 11, 1999.

FSA service corporations may reinsure private mortgage insurance on loans originated or purchased by the parent FSA's affiliate. Op. Ch. Couns., Nov. 2, 1998. OTS will consider, on a case-by-case basis, FSA service corporation applications to engage in mortgage reinsurance activities. See Subsidiaries and Equity Investments, 61 Fed. Reg. 66,561, 66,565-66 (1996); OTS Op. BTB, Oct. 10, 1997 and OTS Order No. 97-107, Oct. 10, 1997 (second tier FSA service corporation may reinsure a portion of private mortgage insurance issued by third party underwriters on loans originated by the FSA or its mortgage lending subsidiaries). See also VI.B. above, "Insurance Activities of FSA Service Corporations (Preapproved)."

D. Title Insurance

FSA service corporations may engage in title insurance brokerage or agency. 12 C.F.R. § 559.4(f)(3). See also VI.B. above, "Insurance Activities of FSA Service Corporations (Preapproved)."

VII. SECURITIES, INVESTMENT ADVICE, AND DERIVATIVES

A. Asset Securitization

Generally, FSAAs may use asset securitization to sell any type of loans or other credit receivables they are authorized to originate or purchase. In order to engage in the sales activity directly (or through a FSA service corporation), the FSA (or FSA service corporation) must register as a broker-dealer pursuant to the federal securities laws. Interagency Guidance of Asset Securitization Activities, Dec. 13, 1999.

B. Brokerage

FSAs may perform activities specified in sections 201 and 202 of the Gramm-Leach-Bliley Act (e.g., third-party brokerage arrangements, trust activities, asset-backed transactions) without registering as brokers or dealers with the SEC under the Securities Exchange Act of 1934 on the same terms and under the same conditions that banks are excepted or exempted from registering. The SEC has exempted FSAs from registering until May 12, 2002, and has indicated its intent to extend the compliance period further. SEC Interim Final Rule 15a-9, 66 Fed. Reg. 27,760 (May 18, 2001); SEC Release No. 34-44580 (July 18, 2001); SEC News Digest, Issue 2002-36 (Feb. 22, 2002).

FSA service corporations may execute securities transactions on an agency or riskless principal basis upon the order of and for the account of customers. 12 C.F.R. §§ 545.74 and 559.4(f). Service corporations engaging in securities brokerage activities are subject to SEC broker-dealer registration requirements. 15 U.S.C. § 78o. See also VII.F. below, "Securities Activities of FSA Service Corporations (Preapproved)."

C. Derivatives Activities

FSAs may engage in transactions involving a financial derivative (i.e., futures, forward commitments, options, and swaps) if they are authorized to invest in the assets underlying the financial derivative, the transaction is safe and sound, and the FSA's board of directors and management oversees the activity as set forth in 12 C.F.R. § 563.172, including keeping records on that activity. 63 Fed. Reg. 66,348, 66,349 (Dec. 1, 1998).

D. Investment Advice

FSAs with trust powers may provide investment advice to any customer through a trust department. OTS Op. Acting Ch. Couns., Dec. 30, 1993. See also 12 C.F.R. § 550.30(j).

Through SEC-registered service corporations, FSAs may provide investment advice to their customers (i.e., advice on the value of; recommendations as to investing in, purchasing or selling; or analysis or reports concerning, securities). FSA service corporations providing investment advice must register as investment advisers under the Investment Advisers Act. 12 C.F.R. §§ 545.74 and 559.4(f)(2); and 15 U.S.C. § 80b-3. See also VII.F. below, "Securities Activities of FSA Service Corporations (Preapproved)."

E. Mutual Funds

FSA service corporations may sponsor, advise, and distribute mutual funds, in addition to brokering both proprietary and third party mutual funds, with OTS approval. FSA service corporations are subject to SEC broker-dealer and investment adviser registration requirements. 12 C.F.R. §§ 545.74 and 559.4(f); FHLBB Res. No. 88-237. See also VII.F. below, "Securities Activities of FSA Service Corporations (Preapproved)."

F. Securities Activities of FSA Service Corporations (Preapproved)

FSA service corporations are preapproved to perform the following securities activities and related services: (1) execution of transactions in securities or other nondeposit investment products on an agency or riskless principal basis solely upon the order of and for the account of customers, provided that the service corporation complies with 12 C.F.R. § 545.74; (2) investment advice, provided that the service corporation complies with 12 C.F.R. § 545.74; (3) liquidity management; and (4) issuing notes, bonds, debentures, or other obligations or securities. 12 C.F.R. § 559.4(f).

G. Underwriting and Dealing

FSAs may, subject to certain restrictions, underwrite and deal in the following types of securities issued by States and their political subdivisions: (1) general obligation bonds; (2) municipal revenue bonds; and (3) municipal notes. OTS Op. Ch. Couns., Oct. 29, 2001.

FSA service corporations may underwrite and deal in municipal securities. OTS Op. Ch. Couns., June 19, 2001.

VIII. OTHER CUSTOMER SERVICES

A. Customer Services of FSA Service Corporations (Preapproved)

1. Activities not “as principal”

FSA service corporations are preapproved to engage in activities conducted on behalf of a customer in capacities other than as a principal (e.g., as an agent, as a trustee). 66 Fed. Reg. at 65,825 (to be codified at 12 C.F.R. § 559.4(i)).

2. Business and professional services

FSA service corporations are preapproved to perform the following business and professional services when they are limited to financial documents or financial clients or are generally finance-related: (1) accounting or internal audit; (2) advertising, marketing research, and other marketing; (3) clerical; (4) consulting; (5) courier; (6) office supplies, furniture, and equipment purchasing and distribution; (7) personnel benefit program development or administration; (8) relocation of personnel; and (9) research studies and surveys. 12 C.F.R. § 559.4(b).

3. Coin purchases and sales

FSA service corporations are preapproved to purchase or sell coins issued by the U.S. Treasury. 12 C.F.R. § 559.4(f)(6).

4. Consumer services

FSA service corporations are preapproved to perform the following consumer services: (1) financial advice or consulting; (2) foreign currency exchange; (3) home ownership counseling; (4) income tax return preparation; (5) postal services; (6) welfare benefit distribution; and (7) check printing and related services. 12 C.F.R. § 559.4(d).

5. Credit-related services

FSA service corporations are preapproved to perform the following credit-related activities: (1) abstracting; (2) acquiring and leasing personal property; (3) appraising; (4) collection agency; (5) credit analysis; (6) check or credit card guaranty and verification; (7) escrow agent or trustee (under deeds of trust, including executing and delivering conveyances, reconveyances and transfers of title); and (8) loan inspection. 12 C.F.R. § 559.4(c).

6. Real estate-related services

FSA service corporations are preapproved to perform the following real estate related services:

(1) acquiring real estate for prompt development or subdivision, for construction of improvements, for resale or leasing to others for such construction, or for use as manufactured home sites, in accordance with a prudent program of property development; (2) acquiring improved real estate or manufactured homes to be held for rental or resale, for remodeling, renovating, or demolishing and rebuilding for sale or rental, or to be used for offices and related facilities of a stockholder of the service corporation; (3) maintaining and managing real estate; and (4) real estate brokerage. 12 C.F.R. § 559.4(e).

B. Deposit and Currency Related

1. Cashiers' checks and money orders, travelers' checks, savings bonds, certified checks

FSAs may issue, collect, and process cashiers' checks and money orders. 12 C.F.R. § 545.17; FHLBB Ops. Gen. Couns., Nov. 24, 1965 and July 27, 1981.

FSAs may issue traveler's checks. FHLBB Op. Gen. Couns., Nov. 24, 1965; FHLBB Ops. Dep. Ch. Couns., Mar. 16, 1988 and Feb. 1, 1982.

2. Check cashing and processing, cash management, payment processing

FSAs may cash and process checks. 12 U.S.C. § 1464(b)(1)(E); FHLBB Op. Gen. Couns., June 24, 1968; 12 U.S.C. § 4001 et seq.; 12 C.F.R. part 229.

FSA service corporations may provide check and credit card guaranty and verification services. 12 C.F.R. § 559.4(c)(6). See also VIII.A. above, "Customer Services of FSA Service Corporations (Preapproved)."

3. Currency exchange forward contracts

FSAs may act as principal in providing foreign exchange forward contracts to commercial borrowers. OTS Op. Ch. Couns., April 3, 2000.

4. Currency exchange services

FSAs may provide foreign currency exchange services to their customers. OTS Op. Ch. Couns., Aug. 11, 1995.

FSA service corporations may provide foreign currency exchange services. 12 C.F.R. § 559.4(d)(2), FHLBB Res. No. 72-252, Feb. 29, 1972. See also VIII.A. above, "Customer Services of FSA Service Corporations (Preapproved)."

5. Sweep Arrangements

FSAs may establish sweep arrangements using government securities repurchases. FSAs may also sweep funds out of the thrift for investment in mutual funds overnight, subject to certain conditions. OTS Op. Ch. Couns., Mar. 2, 1998. See also OTS Op. Ch. Couns., Aug. 1, 2000 (FSA may provide one way sweep arrangements to commercial depositors).

C. Escrow and Surety

1. Escrow services, mortgage document custodian services

FSAs may provide escrow services in connection with real estate loans and real estate transactions. See 61 Fed. Reg. 50,951, 50,961 (Sept. 30, 1996).

FSAs may establish commercial escrow accounts. See OTS Op. Ch. Couns., Aug. 19, 1998 (FSA may establish an escrow account for commercial customer for deposit of funds representing down payments on future vacations).

FSA service corporations may act as escrow agent. 12 C.F.R. § 559.4(c)(7). See also VIII.A. above, "Customer Services of FSA Service Corporations (Preapproved)."

FSAs may act as document custodian of residential mortgage loan documents for third parties without obtaining approval to exercise trust power. OTS Op. Ch. Couns., Jan. 31, 1994.

FSA service corporations may operate as escrow agent or trustee under deeds of trust. 12 C.F.R. § 559.4(c)(7). See also VIII.A. above, "Customer Services of FSA Service Corporations (Preapproved)."

2. Surety

FSAs may act as surety, as defined by the OTS Director. 12 U.S.C.A. § 1464(b)(2); 12 C.F.R. § 560.60.

D. Lending and Real Estate-Related

1. Appraisals

FSAs may conduct appraisals for transactions in which they are involved as lender or otherwise, but have not been authorized to date to offer appraisal services to the general public. 12 C.F.R. § 564.5.

FSA service corporations may offer appraisal services to the general public. 12 C.F.R. § 559.4(c)(3). See also VIII.A. above, "Customer Services of FSA Service Corporations (Preapproved)."

2. Debt cancellation agreements

FSAs are authorized to enter into agreements that result in cancellation of debt upon the death, disability, or other loss experienced by a borrower. OTS Op. Acting Ch. Couns., Sept. 15, 1993; OTS Op. Ch. Couns., Dec. 18, 1995.

3. Flood hazard determinations

FSAs and their subsidiaries may provide mortgage lenders with flood hazard determination services. 12 C.F.R. part 572.

4. Interest rate hedging services

FSAs may act as principal in interest rate hedge transactions with commercial loan customers. OTS Op. Ch. Couns., Dec. 30, 1999.

5. Real estate brokerage

FSA service corporations may engage in real estate brokerage for property owned by the parent thrift, the service corporation or a lower-tier subsidiary of the service corporation. 12 C.F.R. § 559.3(e)(4). See also VIII.A. above, "Customer Services of FSA Service Corporations (Preapproved)."

OTS has determined that real estate brokerage for third parties is reasonably related to the activities of financial institutions and, therefore, on a case-by-case basis could be approved for a FSA service corporation or mutual holding company. OTS Op. Ch. Couns., July 16, 1997. See also VIII.A. above, "Customer Services of FSA Service Corporations (Preapproved)."

E. Other

1. Correspondent services

FSAs may provide correspondent services. 48 Fed. Reg. 23,032, 23,035 (May 13, 1983); 47 Fed. Reg. 17,468, 17,469 (Apr. 23, 1982); FHLBB letter by Long (Jan. 13, 1984); FHLBB Op. by Barnett (Nov. 10, 1982).

2. Financial consulting

FSAs may engage in consulting and advisory services for other financial institutions and the general public. OTS Op. Ch. Couns., May 10, 1995; FHLBB Op. Gen. Couns., Aug. 11, 1981. Depending on the nature of the activity, registration under the Investment Advisers Act may be required.

Through a service corporation, a FSA may engage in certain business and professional activities, including consulting, that involve financial services. 12 C.F.R. § 559.4. See VIII.A. above, "Customer Services of FSA Service Corporations (Preapproved)."

3. Messenger services

FSAs are authorized to provide messenger services to facilitate customer transactions, including deposits. OTS Mem. Dep. Ch. Couns., Nov. 20, 1992; FHLBB Mem. Gen. Couns., Nov. 20, 1986.

FSA service corporations may engage in the business of providing financial courier services to the general public. 12 C.F.R. § 559.4(b)(5). See also OTS Op. Ch. Couns., Oct. 17, 1995 (FSAs may provide support services, such as receiving, storing, transmitting and executing or obtaining execution of certain documents, for an unaffiliated trust company). See also VIII.A. above, "Customer Services of FSA Service Corporations (Preapproved)."

4. Payroll processing services

FSAs may provide payroll processing services if the services are performed primarily for the FSA, other depository institutions, or persons with whom the FSA has established a loan or deposit relationship. OTS Op. Ch. Couns., Oct. 1, 1998.

Payroll processing is a preapproved business and professional service activity for service corporations and does not have to be limited to financial clients. OTS Op. Ch. Couns., Oct. 1, 1998. See also VIII.A. above, "Customer Services of FSA Service Corporations (Preapproved)."

5. Postal services

FSAs may offer postal services from their retail offices and may receive income from such operations. Activities include meter stamping, accepting matter for mailing, accepting registered mail, issuing money orders, selling related insurance, and selling stamps. FSAs must comply with U.S. Postal Service regulations, and must keep postal service records separate from other association operations. Postal service records may be subject to inspection by OTS and the U.S. Postal Service. OTS Op. Acting Ch. Couns., Mar. 25, 1994.

FSA service corporations may offer postal services to the general public. 12 C.F.R. § 559.4(d)(5). See also VIII.A. above, "Customer Services of FSA Service Corporations (Preapproved)."

6. Support services

FSAs may provide ministerial, non-discretionary support services as agent for a trust company without obtaining prior approval to exercise trust powers. OTS Op. Ch. Couns., Oct. 17, 1995.

FSA service corporations may provide abstract services, operate a collection agency, and provide various other credit-related services, including credit analysis and loan inspection. 12 C.F.R. § 559.4(c). See also VIII.A. above, "Customer Services of FSA Service Corporations (Preapproved)."

7. Tax returns

FSA service corporations may prepare income tax returns. 12 C.F.R. § 559.4(d)(4). See also VIII.A. above, "Customer Services of FSA Service Corporations (Preapproved)."

8. Transaction finders

FSAs may act as finders and collect referral fees for referring customers to registered investment advisers, subject to certain conditions, and enter into referral fee arrangements approved by OTS Regional Offices. OTS Op. Ch. Couns., May 5, 2000.

FSAs may pay referral fees to third parties for the referral of trust business. OTS Op. Ch. Couns., Dec. 21, 1998, TB 76-1.

FSA may, under certain circumstances, pay a fee to a person who introduces a depositor to the FSA. 12 C.F.R. § 561.16.

IX. OFFICE LOCATIONS

A. Branches (Home State)

FSAs may establish branches anywhere in their home state, with OTS approval, without regard to intrastate branching restrictions applied to state thrifts, provided they have adequate capital, meet CRA requirements, and do not otherwise present a basis for supervisory objection. 12 C.F.R. §§ 545.92 and 556.5. FSAs may own and operate full-service mobile banking facilities as branch offices. OTS Op. Acting Ch. Couns., May 16, 1994.

B. Branches (Interstate)

FSAs may establish branches in any state or territory in the U.S. other than their home state (de novo or by merger), with OTS approval, provided they have adequate capital, meet CRA requirements, do not

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otherwise present a basis for supervisory objection, qualify as either a domestic building and loan association under the tax code or a qualified thrift lender, and the branching does not occur through acquisition of an out-of-state thrift by a thrift subsidiary of a multiple holding company. 12 C.F.R. §§ 545.92 and 556.5.

C. Interaffiliate Banking Arrangements

FSAs may enter into arrangements with affiliated savings associations to provide basic banking services, including deposit taking and closing and servicing loans, without filing branch applications. OTS Op. Ch. Couns., Dec. 30, 1994.

FSAs may contract with affiliated banks to provide basic banking services under certain circumstances. OTS Op. Ch. Couns., Aug. 25, 1995.

D. Interstate Banking through Separate Financial Institution Subsidiaries

Savings and loan holding companies generally may acquire FSAs located in a new state and hold them as separate subsidiaries if: (1) the laws of the new state would permit a thrift or thrift holding company in the existing home state to acquire a state thrift in the new state; or (2) the acquisition is approved under 12 U.S.C. § 1823(k) (emergency acquisition authority). However, these restrictions do not apply where the new thrift and the existing thrift merge, provided the holding company has only one thrift subsidiary. 12 U.S.C. § 1467a(e)(3).

E. Nonbranch Facilities

1. Agency offices

FSAs may establish agency offices without geographic limitation. No advance approval is required for an agency office that merely originates and services loans or manages REO. Specific approval is required for other activities, such as loan approvals. Any activity that can be conducted at a branch office could be approved for an agency office, except making payments on savings accounts. 12 C.F.R. § 545.96.

FSAs may establish foreign agency offices with OTS approval and subject to safety and soundness restrictions imposed to address the unique risks that can be presented by foreign operations. OTS Op. Acting Ch. Couns., June 13, 1994.

2. ATMs, point-of-sale ("POS") terminals, and ALMs (See also IV above, "ELECTRONIC OPERATIONS")

FSAs may own, rent, or use ATMs and POS terminals without geographic restriction and without obtaining OTS approval. 12 C.F.R. § 555.200; OTS Op. Acting Ch. Couns., Sept. 19, 1997. FSAs may establish and operate mobile banking facilities or ATMs. OTS Mem. Acting Ch. Couns., May 16, 1994.

FSAs may invest in corporations operating ATM and POS systems, subject to certain conditions. OTS Op. Ch. Couns., Sept. 15, 1995.

FSAs may establish ALMs. OTS Op. Ch. Couns., Sept. 19, 1997.

X. AFFILIATES

A. Foreign Subsidiaries and Operations

FSAs may establish operating subsidiaries in foreign countries subject to the same technical, procedural, safety and soundness, and supervisory requirements that are applicable to FSAs establishing domestic operating subsidiaries. 12 C.F.R. § 559.3; OTS Op. Acting Ch. Couns., July 6, 1994. Subject to conditions, FSAs may create operating subsidiaries chartered in foreign countries to hold financial assets. OTS Mem. Ch. Couns., Jan. 14, 2000.

FSAs may establish foreign agency offices with OTS approval and subject to safety and soundness restrictions. OTS Op. Ch. Couns., Sept. 15, 1995. See also IX.E. above, "Nonbranch Facilities."

B. Holding Companies

FSAs, after May 4, 1999, may only be acquired by a company that is engaged in financial activities. 12 U.S.C. § 1467a(c)(3), as amended by section 401 of the Gramm -Leach-Bliley Act ("GLBA").

Multiple savings and loan holding companies may engage in activities permitted for "financial holding companies" under § 4(k) of the Bank Holding Company Act, as amended by § 103(a) of GLBA. See also OTS Op. Ch. Couns., Apr. 11, 2001.

C. Operating Subsidiaries

FSAs may establish or acquire operating subsidiaries that engage exclusively in activities that FSAs may engage in directly. 12 C.F.R. §§ 559.2 and 559.3. Pursuant to this authority, a FSA may hold one or more depository institutions as operating subsidiaries. 12 C.F.R. § 559.3(e).

State laws apply to FSA operating subsidiaries only to the extent the state laws apply to FSAs. 12 C.F.R. § 559.3(n)(1).

State mortgage licensing laws are preempted for operating subsidiaries to the same extent such laws are preempted for FSAs. OTS Ops. Ch. Couns., July 29, 1999., July 26, 1999, and Aug. 19, 1997; 12 C.F.R. § 559.3(n)(1).

State fiduciary activities laws are preempted for operating subsidiaries to the same extent such laws are preempted for FSAs. OTS Op. Ch. Couns., Jan. 10, 2002.

D. Service Corporations

FSAs may invest up to 2% of their assets (and an additional 1% of assets for community development purposes) in service corporations. FSA service corporations are preapproved to engage in any activity that FSAs may conduct directly, except taking deposits. 12 C.F.R. § 559.4(a).

FSA service corporations eligible for expedited treatment may engage in any preapproved activity after notice; the FSA may apply for OTS approval for a service corporation to engage in other activities reasonably related to the activities of FSAs. Service corporations subject to standard treatment may, after notice, engage in activities that the FSA may engage in directly except taking deposits; the FSA may apply for OTS approval for a service corporation to engage in any other activity reasonably related to the activities of FSAs, including preapproved activities. Service corporation activities are not subject to geographic limits. 12 U.S.C. § 1464(c)(4)(B); 12 C.F.R. §§ 559.3 and 559.4.

FSAs may generally make loans to majority-owned service corporations (over and above their 3% service corporation investment limit) to the extent authorized under any other lending or investment provision of the HOLA, up to the available lending capacity that remains under such authority. 12 C.F.R. § 559.5(b). The amount of loans that may be extended to a service corporation in which a FSA does not own a majority interest, generally is limited to 15% of capital for any one entity and an aggregate of 50% of FSA capital for loans to all such entities (i.e., to the extent available lending authority and remaining lending capacity exist under some other provision). 12 C.F.R. § 559.5(b)(1).

FSA service corporations engaging in a preapproved activity listed in 12 C.F.R. § 559.4(a)-(i), may also engage in any activities reasonably incident to that preapproved activity. 12 C.F.R. § 559.4(j).

XI. MISCELLANEOUS

A. Borrowing

FSAs may obtain secured advances from the FHLBs in amounts up to 20 times a FSA's investment in FHLB stock, and may also obtain secured or unsecured loans from, and issue secured or unsecured obligations to third parties in unlimited amounts, subject to safety and soundness. 12 U.S.C. §§ 1430 and 1464(b)(2); 12 C.F.R. § 563.80.

B. Charitable Contributions

FSAs may make reasonable charitable contributions, either directly or through charitable foundations established by them. OTS Op. Ch. Couns., Nov. 12, 1992. See also Community Development Investment Authority: A Guide to the Federal Laws & Regulations Governing Community Development Activities of Savings Associations, OTS, (Dec. 1998) at 20.

C. Credit Enhancements

FSAs participating in a FHLB sponsored Mortgage Partnership Finance program may act as agent for a FHLB, underwriting, servicing, and providing a second-dollar loss credit enhancement for residential mortgages for a fee. (OTS treats this second-dollar loss credit enhancement as a direct credit substitute for risk-based capital purposes.) Joint Federal Banking Agency Letter to Chicago FHLB, July 19, 1999; Joint Federal Banking Agency Letter to Atlanta FHLB et al., Dec. 21, 1999.

D. Leasing Lobby Space; Sharing Space and Personnel

FSAs may lease lobby space to other companies provided there is a clear demarcation between the lessee's space and the institution's space. FHLBB Op. Gen. Counsel, Feb. 7, 1985.

XII. PREEMPTION

A. Deposits, Preemption of State Law Pertaining to

FSAs generally are not subject to state laws attempting to regulate FSAs' deposit-related activities, including state laws governing abandoned and dormant accounts, checking accounts, disclosure requirements, funds availability, savings accounts orders of withdrawal, service charges and fees, state licensing or registration, and special purpose savings services. 12 C.F.R. §§ 557.11 to 557.13; OTS Op. Ch. Couns., Oct. 11, 1991.

State escheat laws, such as those that require a FSA to remit the balance of an abandoned account to the state at a designated time or that allow states to review FSA records solely to determine compliance with the escheat laws, are not preempted. OTS Op. Ch. Couns., Jan. 18, 1996; FHLBB Op. Dep. Ch. Couns., May 24, 1984.

B. Examples

1. Branching

A provision of Connecticut law that requires an out-of-state bank to obtain approval of the Connecticut Banking Commissioner before opening a branch is preempted for a FSA establishing agency offices to provide trust services in the state. OTS Op. Ch. Couns., Jan. 4, 1999.

2. Electronic operations

Provisions of Iowa and Wyoming statutes and regulations that purport to restrict the establishment and operation of ATMs on an interstate basis are preempted for FSAs. OTS Op. Ch. Couns., July 1, 1998.

Provisions of Massachusetts law that purport to restrict the establishment and operation of electronic branches, including ATMs, do not apply to FSAs. OTS Mem. Ch. Couns., Dec. 22, 1998.

Federal law does not preempt a provision of the New York law requiring “adequate lighting” at ATMs. The lighting requirement is narrowly tailored to further a legitimate, vital state interest in the physical safety of ATM consumers, appears to have only an incidental effect on FSAs’ ability to provide financial services electronically, and is not contrary to OTS regulations. OTS Op. Ch. Couns., Jan. 15, 1999.

Federal law preempts municipal ordinances that purport to prohibit a FSA from charging a fee to a customer for accessing an ATM of that financial institution with an access device not issued by that financial institution. OTS Ops. Ch. Couns., Nov. 22, 1999 and Dec. 7, 1999.

3. Fiduciary activities

FSAs may market trust services interstate without regard to state laws that prohibit foreign fiduciaries from marketing. OTS Op. Ch. Couns., June 21, 1996. OTS Op. Ch. Couns., July 1, 1998.

A FSA may exercise, in an agency office in Virginia, fiduciary powers granted by OTS notwithstanding a Virginia statute that purports to prohibit institutions with a home office in another state from engaging in such activities in Virginia. OTS Op. Ch. Couns., Jan. 3, 2001.

4. Lending

Federal law preempts the application of an anti-pass through provision of New York State tax law barring mortgage lenders from passing on to mortgagors a special mortgage recording tax. OTS Op. Dep. Ch. Couns., May 11, 1998.

State laws purporting to impose interest requirements regarding mortgage escrow accounts are preempted for FSAs. OTS Op. Asst. Ch. Couns., Nov. 17, 1998.

Federal law preempts the manner in which a state law was applied to the extent it impermissibly interfered with a FSA’s lending operations in the areas of advertising, force placement of hazard insurance, and loan-related fees. The state’s application of the state law had more than an incidental impact on lending, and was inconsistent with the objective of allowing FSAs to operate in accordance with

uniform federal standards. The state law is not preempted in its entirety, but only to the extent it was used to require particular disclosures, limit loan fees, or limit hazard insurance. OTS Op. Ch. Couns., Mar. 10, 1999.

Federal law preempts state mortgage lender licensing and approval requirements for an operating subsidiary of a FSA. OTS Ops. Ch. Couns., July 26, 1999 and July 29, 1999.

Federal law preempts application to a FSA of a New York law that limits the imposition of fees for providing mortgage loan payoff statements. OTS Op. Ch. Couns., Apr. 21, 2000. Federal law preempts Iowa laws regulating loan fees. OTS Op. Ch. Couns., Dec. 14, 2001.

C. Lending, Preemption of State Law Pertaining to

1. In general

FSAs are generally not subject to state laws that purport to regulate the lending operations of FSAs or their operating subsidiaries such as: registration and licensing, PMI requirements, LTVs, credit terms, loan-related fees, escrow accounts, security property, access to and use of credit reports, disclosure and advertising, origination and servicing of mortgages, disbursements and repayments, usury and interest rate ceilings (subject to MFL provisions), and due-on-sale clauses. FSAs are subject to the following types of state laws to the extent that they only incidentally affect the lending operations of FSAs or are not otherwise inconsistent with the purposes of OTS's lending regulations: contract and commercial law, real property laws, Texas homestead provision, tort law, and criminal law. 12 U.S.C. § 1464(a) and (f); 12 C.F.R. § 560.2; OTS Op. Ch. Couns., Aug. 19, 1997 (mortgage lending licensing); OTS Op. Ch. Couns., Sept. 2, 1997 (licensing); and OTS Op. Ch. Couns., July 1, 1998 (ATM registration and operating restrictions).

2. Usury

FSAs may charge any interest rate on first lien residential mortgage loans. 12 U.S.C. § 1735f -7a. See also OTS Op. Ch. Couns., Aug. 25, 1997 (state law purporting to limit discount points a lender may receive in connection with making "federally related mortgage loans" secured by a first-lien on residential real estate is preempted).

FSAs may charge interest on other loans at the higher of (1) the Federal Reserve discount rate plus one percent or (2) the "most favored lender" rate allowed by the laws of any state where a FSA is "located." 12 U.S.C. § 1463(g); 12 C.F.R. § 560.110. At a minimum, FSAs are located in any states where they have a branch and, under certain conditions, may export the most favored lender rate from those states. OTS Op. Ch. Couns., Dec. 24, 1992; OTS Op. by Solomon, Sept. 29, 1994.

See also OTS Op. Ch. Couns., Dec. 24, 1996 (state laws pertaining to disclosure and loan-related charges, except those that constitute "interest" under the Most Favored Lender provision of HOLA, are preempted).